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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,840	07/05/2003	Stephen B. Welbourne		2923

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EXAMINER	
PARSLEY, DAVID J	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,840	WELBOURNE, STEPHEN B.	
	Examiner	Art Unit	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) *17-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 21-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7-5-03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Election/Restrictions

1. Applicant's election of claims 1-16 and 21-31 in the reply filed on 10-16-04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10-16-04.

Claim Objections

2. Claim 3 is objected to because of the following informalities: "swirling" in line 6 should be - -swirling- -. Appropriate correction is required.

Claim 5 is objected to because of the following informalities: the term "possible" in line 6 should be deleted. Appropriate correction is required.

Claim 31 is objected to because of the following informalities: "swirling" in line 13 should be - -swirling- -. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 5 it is unclear to what the ejecting means ejects the fluid into.

Claims 2-7 depend from rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-14, 21-22, 26-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,779,571 to Row.

Referring to claim 1, Row discloses a system for providing fluid to a cup, the cup comprising, in side elevation, a bottom, a substantially open top and substantially vertically projecting sides – see figures 4-5, the system further comprising means for accepting fluid projecting through the bottom of the cup – see at 71 and 79, and means for ejecting fluid – see at 54-78, the system being distinguished in that there is a restriction element frame – at 95, present at least partially within the cup in a plane which substantially bisects the cups as viewed from above – see for example figures 4-5.

Referring to claim 2, Row discloses the means for accepting the fluid is incorporated in a nipple housing – see at 79-80, which further comprises a rod means – see proximate 100 in figures 4-5, situated therewithin, such that an annular space is present between the rod means and the nipple housing – see figures 4-5, the rod means being projected in the plane of the restriction frame element, accessible from atop the cup and functionally incorporated into the means for accepting fluid such that movement of the rod means causes the means for accepting fluid to allow fluid to enter into the cup via the means for ejecting the fluid – see for example figures 4-5.

Referring to claim 3, Row discloses the means for ejecting the fluid into the cup ejects the fluid substantially laterally along a non-radially oriented locus – see for example figures 4-5, and without substantial upward or downward components, so that it approaches at an non-normal angle to a substantially vertically projecting cup side – see proximate 70,70,95 in figures 4-5, such that the ejected fluid causes swirling motion of the fluid present in the cup which tends to prevent solids present therein from settling out thereof – see for example figures 4-5. The

limitations of the swirling motion preventing solids present in the cup from settling out thereof, is considered an intended use (functional) limitation in an apparatus claim and has been considered but is not deemed to add any structural limitations to the claimed invention and it is deemed that the device of Row is capable of performing this function in that force of the water through the channel below item – 95, causes a swirling motion inside the cup – at 51.

Referring to claims 4 and 14, Row discloses the cup has an inner bottom surface – see proximate 70,71, which is concave upward – see proximate 71, and is functionally continuous with a lower portion of the means for ejecting the fluid into the cup – at 58,62, portion of the means for ejecting the fluid into the cup – see for example figures 4-5.

Referring to claim 5, Row discloses the annular space between the nipple and the rod means is smaller at its top than it is underneath – see figures 4-5, the annular space having a float – at 100, therewithin, such that if fluid accumulates within the annular space, the float rises in the annular space and serves to automatically restrict possible rod means motion – see for example figures 4-5, column 7 lines 60-68 and column 8 lines 1-39.

Referring to claim 6, Row discloses means – at 58, for preventing fluid, which enters the cup from flowing back into a source thereof – see for example figures 4-5.

Referring to claims 8, 10-11 and 13, Row discloses a system for providing fluid to a cup, the cup, in side elevation having a bottom, a substantially open top and substantially vertically projecting sides – see figures 4-5, the system further comprising, means for accepting fluid projecting through the bottom of the cup – see at 71 and 79, and means for ejecting fluid – see at 54-78, the system being distinguished in that there is a restriction element frame – at 95, present at least partially within the cup in a plane which substantially bisects the cups as viewed from

above – see for example figures 4-5. the means for accepting the fluid is incorporated in a nipple housing – see at 79-80, which further comprises a rod means – see proximate 100 in figures 4-5, situated therewithin, such that an annular space is present between the rod means and the nipple housing – see figures 4-5, the rod means being projected in the plane of the restriction frame element, accessible from atop the cup and functionally incorporated into the means for accepting fluid such that movement of the rod means causes the means for accepting fluid to allow fluid to enter into the cup via the means for ejecting the fluid – see for example figures 4-5, the means for ejecting the fluid into the cup ejects the fluid substantially laterally along a non-radially oriented locus – see for example figures 4-5, and without substantial upward or downward components, so that it approaches at an non-normal angle to a substantially vertically projecting cup side – see proximate 70,70,95 in figures 4-5, such that the ejected fluid causes swirling motion of the fluid present in the cup which tends to prevent solids present therein from settling out thereof – see for example figures 4-5, the annular space between the nipple and the rod means is smaller at its top than it is underneath – see figures 4-5, the annular space having a float – at 100, therewithin, such that if fluid accumulates within the annular space, the float rises in the annular space and serves to automatically restrict possible rod means motion – see for example figures 4-5, column 7 lines 60-68 and column 8 lines 1-39, and means – at 58, for preventing fluid which enters the cup from flowing back into a source thereof – see for example figures 4-5.

Referring to claims 9 and 12, Row discloses the means for ejecting the fluid into the cup along a substantially horizontally oriented non-radial rather than along a substantially upward or downward oriented radial locus is on an even vertical level with substantially flat upper surface

of the bottom of the cup as viewed in elevation – see for example proximate items 71 and 79 in figures 4-5.

Referring to claims 21 and 26, Row discloses a system for providing fluid to a cup, the cup comprising, in side elevation, a bottom, a substantially open top and substantially vertically projecting sides – see figures 4-5, the system further comprising means for accepting fluid projecting through the bottom of the cup – see at 71 and 80, and means for ejecting fluid – see at 54-79, the system being distinguished in that there is a restriction element frame – at 95, present at least partially within the cup in a plane which substantially bisects the cups as viewed from above – see for example figures 4-5, the means for accepting the fluid is incorporated in a nipple housing – see at 80, which further comprises a rod means – see proximate 100 in figures 4-5, situated therewithin, such that an annular space is present between the rod means and the nipple housing – see figures 4-5, the rod means being projected in the plane of the restriction frame element, accessible from atop the cup and functionally incorporated into the means for accepting fluid such that movement of the rod means causes the means for accepting fluid to allow fluid to enter into the cup via the means for ejecting the fluid, the amount of fluid flow caused to being generally greater for a greater amount rod means movement – see for example figures 4-5, the system having no elements present therewithin that influence fluid ejection into the cup along a locus with a generally upward or downward component and along a substantially horizontally oriented locus – see for example figures 4-5, the system being characterized in that means for limiting the amount of motion allowable to the rod means is removably affixed thereto – see at 79-80, 95, 100, and further characterized by the presence of a restriction element frame – at 95, at least partially within the cup in a plane which substantially bisects the cup as viewed from

above, the rod means being substantially within the plane of the restriction element frame – see for example figures 4-5.

Referring to claim 22, Row discloses means for limiting the amount of motion allowable to the rod means – see at 79-80, 95, 100, the means for limiting the amount of motion allowable to the rod means being removably affixed thereto – see for example figures 4-5.

Referring to claim 27, Row discloses the means for ejecting – at 56,58,79,100, the fluid into the cup is on an even vertical level with an upper surface of a bottom of the cup – at 70,71, as viewed in elevation – see for example figures 4-5.

Referring to claim 28, Row discloses the means for ejecting the fluid into the cup is a means for ejecting fluid along a substantially horizontally oriented non-radial rather than along a substantially upward or downward oriented locus – see for example figures 4-5.

Referring to claim 31, Row discloses a system for providing fluid to a cup, the cup as presented in side elevation having a bottom, a substantially open top and substantially vertically projecting sides – see figures 4-5, the system further comprising means for accepting fluid projecting through the bottom of the cup – see at 71 and 79, and means for ejecting fluid – see at 54-78, the system being distinguished in that there is a restriction element frame – at 95, present at least partially within the cup in a plane which substantially bisects the cups as viewed from above – see for example figures 4-5, the means for ejecting the fluid into the cup ejects the fluid substantially laterally along a non-radially oriented locus – see for example figures 4-5, and without substantial upward or downward components, so that it approaches at an non-normal angle to a substantially vertically projecting cup side – see proximate 70,70,95 in figures 4-5, such that the ejected fluid causes swirling motion of the fluid present in the cup which tends to

prevent solids present therein from settling out thereof – see for example figures 4-5. The limitations of the swirling motion preventing solids present in the cup from settling out thereof, is considered an intended use (functional) limitation in an apparatus claim and has been considered but is not deemed to add any structural limitations to the claimed invention and it is deemed that the device of Row is capable of performing this function in that force of the water through the channel below item – 95, causes a swirling motion inside the cup – at 51.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Row as applied to claim 5 above, and further in view of U.S. Patent No. 4,258,666 to Edstrom. Row further discloses the rod means projects form the nipple housing through a first seal means – at 56, which prevents substantially all fluid from passing vertically therethrough – see for example figures 4-5. Row does not disclose a lower aspect of the rod means being substantially abruptly broadened, and there being a second seal means atop the broadened lower aspect thereof, with retaining means in the nipple housing such that when the rod means is positioned to project substantially vertically, fluid present in the nipple housing therebelow can not flow upward, but such that when the rod means is caused to be moved so as to project other than substantially

vertically, a flow path is opened past the broadened lower aspect of the rod means, and past the second seal means. Edstrom does disclose a lower aspect of the rod means – at 29, being substantially abruptly broadened – at 30, and there being a second seal means – at 33, atop the broadened lower aspect thereof, with retaining means – see at 15-16, in the nipple housing – at 12-13, such that when the rod means is positioned to project substantially vertically, fluid present in the nipple housing therebelow can not flow upward, but such that when the rod means is caused to be moved so as to project other than substantially vertically, a flow path is opened past the broadened lower aspect of the rod means, and past the second seal means – see for example figures 1-5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Row and add the seal means of Edstrom, so as to allow for the device to not leak water when not being used by an animal.

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Row in view of U.S. Patent No. 3,868,926 to Olde.

Referring to claim 29, Row discloses a system for providing fluid to a cup, the cup comprising, in side elevation, a bottom, a substantially open top and substantially vertically projecting sides – see figures 4-5, the system further comprising means for accepting fluid projecting through the bottom of the cup – see at 71 and 80, and means for ejecting fluid – see at 54-79, the system being distinguished in that there is a restriction element frame – at 95, present at least partially within the cup in a plane which substantially bisects the cups as viewed from above – see for example figures 4-5, the means for accepting the fluid is incorporated in a nipple housing – see at 80, which further comprises a rod means – see proximate 100 in figures 4-5, situated therewithin, such that an annular space is present between the rod means and the nipple

housing – see figures 4-5, the rod means being projected in the plane of the restriction frame element, accessible from atop the cup and functionally incorporated into the means for accepting fluid such that movement of the rod means causes the means for accepting fluid to allow fluid to enter into the cup via the means for ejecting the fluid, the amount of fluid flow caused to being generally greater for a greater amount rod means movement – see for example figures 4-5, the system having no elements present therewithin that influence fluid ejection into the cup along a locus with a generally upward or downward component and along a substantially horizontally oriented locus – see for example figures 4-5, the system being characterized in that means for limiting the amount of motion allowable to the rod means is removably affixed thereto – see at 79-80, 95, 100, and further characterized by the presence of a restriction element frame – at 95, at least partially within the cup in a plane which substantially bisects the cup as viewed from above, the rod means being substantially within the plane of the restriction element frame – see for example figures 4-5, Row does not disclose the system being further characterized by the presence of a cup which has a substantially flat upper surface of the bottom thereof such that the substantially flat upper surface meets the substantially vertically projecting sides at a substantially ninety degree angle. Olde does disclose the system being further characterized by the presence of a cup – at 8, which has a substantially flat upper surface of the bottom- see proximate 17 in the drawing figure, thereof such that the substantially flat upper surface meets the substantially vertically projecting sides at a substantially ninety degree angle – see the drawing figure. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Row and add the bottom of the cup meeting the sides of the cup at a ninety degree

angle of Olde, so as to allow for any spray associated with the water entering the cup to be contained by the cup during use.

Referring to claim 30, Row as modified by Olde further discloses the means for ejecting the fluid into the cup – see proximate 56,58,100, along a substantially horizontally oriented non-radial rather than along a substantially upward or downward oriented radial locus is on an even vertical level with substantially flat upper surface of the bottom of the cup – at 70,71, as viewed in elevation – see for example figures 4-5 of Row.

Allowable Subject Matter

5. Claims 15-16 and 23-24 are allowed.

Claim 25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to and animal liquid feed and watering devices in general:

U.S. Pat. No. 2,790,417 to Brembeck – shows animal watering device

U.S. Pat. No. 3,941,094 to Nilsen = shows animal watering device

EP Pat. No. 0554884 – shows animal watering device

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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12/21/04